RECENT CASES.

BILLS AND NOTES — DEFENSES — FRAUD AS DEFENSE AGAINST INDORSEE: BURDEN OF PROOF. — The indorsee of a promissory note sued the maker, who pleaded that the note was procured from him by fraud and that the plaintiff was not a *bonâ fide* purchaser. *Held*, that the burden is on the plaintiff to show that he is a holder for value in good faith. *Cedar Rapids National Bank* v. *Myhre Bros.*, 107 Pac. 518 (Wash.).

For a discussion of the principles involved, see 23 HARV. L. REV. 640.

BILLS AND NOTES — INDORSEMENT — WHEN ASSIGNMENT OPERATES AS INDORSEMENT. — A note was transferred to the plaintiff with the words "I hereby assign my interest in this note," etc., written on the back. *Held*, that this is an assignment, not an indorsement. *Gale* v. *Mayhew*, 125 N. W. 781 (Mich.).

If the words used are "I assign this note," they have the effect of an indorsement. *Markey* v. *Corey*, 108 Mich. 184. But see *Briggs* v. *Latham*, 36 Kan. 205. But a distinction has been taken if the words "I assign my interest in this note" are used, since an indorsement involves more than a mere transfer of an interest. *Aniba* v. *Yeomans*, 39 Mich. 171. For a discussion of a case opposed to the principal case, see 12 HARV. L. REV. 566.

BILLS AND NOTES — OVERDUE PAPER — MATURITY UPON DEFAULT IN PAYMENT OF ONE OF SERIES. — The defendant gave the plaintiff a number of promissory notes, payable at different times, and secured by a chattel mortgage containing a clause that upon default in the payment of any of the notes the rest should immediately become due. The plaintiff recovered on several of the notes as they became due. Upon a subsequent default, the plaintiff again brought suit. *Held*, that the entire debt was due at the time of the first default, and the plaintiff's right of action was merged in his first judgment. *Banzer* v. *Richter*, 123 N. Y. Supp. 678 (Sup. Ct.).

For a discussion of a similar case reaching an opposite result, see 23 HARV. L. REV. 146.

BILLS AND NOTES — OVERDUE PAPER — PROMISE TO PAY ATTORNEY'S FEES. — An action was brought on a promissory note, containing a promise to pay ten per cent attorney's fees, if the note should be put into an attorney's hands for collection or suit. *Held*, that in order to recover on this promise the plaintiff must allege that he has paid, or contracted to pay, a certain amount for such services; and this amount will be the measure of his recovery. *Reed* v. *Taylor*, 129 S. W. 864 (Tex., Ct. Civ. App.).

The validity of a promise to pay attorney's fees is upheld by a small majority of the jurisdictions in this country. *Chestertown Bank of Maryland* v. *Walker*, 163 Fed. 510. *Contra*, *Exchange Bank* v. *Apalachian Land & Lumber Co.*, 128 N. C. 193. This majority is itself divided on the question of negotiability, the prevailing view being that such a note is negotiable. *Cudahy Packing Co.* v. *State Nat. Bank of St. Louis*, 134 Fed. 538. *Contra*, *Findlay* v. *Pott*, 131 Cal. 385. The argument against negotiability is that the amount of the note is uncertain, since it cannot be ascertained in advance whether an attorney will be employed, or, if so, what his charges will be. From this it appears that even when the amount of the fee is stipulated, the courts regard the promise as one of indemnity, and would limit recovery to the amount actually paid the attorney. Of those courts favoring negotiability, a few have decided squarely that this is a promise of indemnity. *Campbell* v. *Worman*, 58 Minn.